

STATE OF VERMONT
PUBLIC SERVICE BOARD

Petition of Vermont Gas Systems, Inc., for a)
certificate of public good, pursuant to 30 V.S.A.)
§ 248, authorizing the construction of the)
“Addison Natural Gas Project” consisting of)
approximately 43 miles of new natural gas)
transmission pipeline in Chittenden and)
Addison Counties, approximately 5 miles of)
new distribution mainlines in Addison County,)
together with three new gate stations in)
Williston, New Haven, and Middlebury,)
Vermont)

Docket No. 7970

BRIEF OF VERMONT GAS SYSTEMS RE:
MEMORANDUM OF UNDERSTANDING

This Brief is filed on behalf of Vermont Gas Systems, Inc. (“Vermont Gas” or “VGS”) in support of a Public Service Board (“Board”) determination that the Addison Natural Gas Project (“Project”) continues to promote the general good of the state, and that the requests for relief under V.R.C.P. 60(b) should be denied as soon as possible. This Brief, together with the concurrently-filed Proposed Decision, supplement the arguments and analyses VGS previously filed in the Second Remand proceeding. As set forth below, with the Memorandum of Understanding (“MOU”) between VGS and the Department of Public Service (“Department”) the Project’s economic benefit and promotion of the general good is very similar to that reflected in the First Remand, where the Board rejected similar Rule 60(b) motions.

I. THE MOU’S COST RECOVERY CAP PROVIDES A SUBSTANTIAL BENEFIT TO CUSTOMERS

The MOU represents an unprecedented commitment to limit cost recovery from customers for a major infrastructure project. Although over the years there have been a variety of earnings caps¹ and related mechanisms,² it is unlikely that there has ever been such an explicit

¹ E.g., *Tariff Filing of Central Vermont Public Service Corporation*, Docket Nos. 6120/6460 (Vt. Pub. Serv. Bd. June 26, 2001) (2002-2003 earnings cap); *Investigation into Memorandum of Understanding between Green*

and substantial proposed limitation on cost recovery in advance of a rate filing. This limitation results in a fundamental shift of cost recovery risk to Vermont Gas from its customers.

Vermont Gas agreed to the MOU based on its and the Department's interest in concluding these proceedings in order to complete the Project on time and on budget and in ending the uncertainty arising from the pendency of this proceeding. It is critical that VGS obtain resolution on the status of the Certificate of Public Good ("CPG") by early January, in order to facilitate activities necessary to be ready for Spring construction.

The MOU represents a commitment that is binding on Vermont Gas and that can be relied on by the Board in reaching its decision in this case.³ It imposes a ceiling on total recoverable Project costs, whenever they are addressed for rate purposes.⁴ The exceptions relating to uncontrollable extraordinary events and material delays in right-of-way construction access are limited in scope and must be clearly identified and supported.⁵ Although VGS and the Department agree that the Project will be used and useful for rate recovery purposes if constructed and brought into service consistent with Board-approved plans, nothing in the MOU limits the Department's ability to review, investigate or challenge any Project-related cost recovery request.⁶

II. THE PROJECT CONTINUES TO RESULT IN SIGNIFICANT ECONOMIC BENEFITS AND TO PROMOTE THE GENERAL GOOD.

As demonstrated in Ms. Simollardes' testimony, the MOU has a significant positive impact on the Project's economic benefit, by reducing costs borne by VGS customers.⁷ The MOU does not affect, on the other hand, the Project's positive impact relating to construction-related benefits or taxes, greenhouse gas reductions or energy savings (other than the increase in

Mountain Power Corp. and Vermont Department of Public Service, Docket No. 6867 (Vt. Pub. Serv. Bd. Dec. 22, 2003) (2003-2006 earnings cap).

² *Investigation into Green Mountain Power Corp. tariff filing*, Docket Nos. 8190/8191 (Vt. Pub. Serv. Bd. Aug. 25, 2014) (approval of revised alternative regulation plan containing, among other things, earnings collar mechanism).

³ Tr. 12/1/15 at 67 (Rendall); Tr. 12/9/5 at 133 (Recchia).

⁴ Rendall MOU Prefiled Testimony ("Pf.") at 2. It should be noted that the cap applies to Project capital costs reflected in the current \$153.6 million forecast. Exh. Pet. 11-6-15 DR-1 at 2 ("cap of \$134 million ... compared to the current \$154 million forecast").

⁵ Exh. Pet. 11-6-15 DR-1 at 2.

⁶ *Id.*

⁷ Simollardes MOU Pf. at 2.

savings resulting from the rate impact).⁸ As a result, the Project improves upon the net economic benefit of at least \$70 million identified by Vermont Gas in its Second Remand testimony.⁹ The MOU similarly increases the extent to which the Project promotes the general good, by capping Project costs recoverable from ratepayers.¹⁰

The Project's continued economic benefits are underscored by reference to the Board's analysis in its October 10, 2014 Order ("First Remand Order"). In its decision, the Board found that the \$35 million increase in forecasted costs reduced the economic benefit by \$10-\$18 million, resulting in a revised economic benefit of \$42-\$72 million.¹¹ The second forecasted cost increase as limited by the MOU adds \$12.4 million to the First Remand cost forecast,¹² or approximately one-third of the First Remand \$35 million cost forecast increase. A similar one-third reduction in economic benefit (\$3.3-\$6 million) from the First Remand amount results in a current economic benefit range of approximately \$39-\$66 million, with a midpoint of this range of approximately \$53 million.¹³

While not a specific rate proposal, with respect to the general good criterion, the Board found in the First Remand that the Project results in a ten-year levelized revenue requirements impact of 7.9%.¹⁴ As a result of the current projected Project cost and the MOU, this impact increases by only 1.2%.¹⁵

In the First Remand, the Board found that existing ratepayers will pay higher rates due to the Project for 32 years, which did not result in an impermissible cross-subsidy.¹⁶ Based on current Project costs and the MOU, this period increases by only 1 to 2 years.¹⁷ As a result, the current record demonstrates that the Project will not result in an impermissible cross subsidy.

In addition to the limited incremental cost impact above the First Remand level, the Board's First Remand analysis of other relevant factors is equally applicable to the current

⁸ Simollardes MOU Pf. at 1.

⁹ Simollardes (5/27/15) Pf. at 7-8.

¹⁰ Simollardes MOU Pf. at 1.

¹¹ *Petition of Vermont Gas Systems, Inc.*, Docket No. 7970 (Vt. Pub. Serv. Bd. Oct. 10, 2014) at 19. This amount excludes energy efficiency benefits.

¹² Simollardes MOU Pf. at 2.

¹³ This analysis is conservative because it does not include the Project's energy efficiency benefits, which the Board found in the First Remand could increase benefits by \$20-\$50 million. First Remand Order at 18.

¹⁴ First Remand Order at 11, 24 (year 1 10.2% revenue requirements increase and 2.3% year 10 revenue requirements decrease).

¹⁵ Simollardes MOU Pf. at 2.

¹⁶ First Remand Order at 24-26; *Petition of Vermont Gas Systems, Inc.*, Docket No. 7970 (Vt. Pub. Serv. Bd. Dec. 23, 2013) ("Final Order") at 144.

¹⁷ Simollardes MOU Pf. at 3 (increase of 1.2 years); Hopkins MOU Pf. at 10-11 (2 years).

record. The Board found in the First Remand that almost any system expansion requires a contribution from other customers for a period of time¹⁸ and that, unlike limited expansions of VGS service, the Project would offer service in entirely new markets.¹⁹ These conclusions are equally applicable today and are consistent with cross-customer contributions in a variety of contexts, including utility mergers²⁰ or geographically-averaged rates.²¹ With the MOU, moreover, revenues from new customers will continue to exceed Project carrying costs for most of the Project's life.²²

The Board's analysis in approving the System Expansion and Reliability Fund ("SERF") also supports the conclusion that the Project continues to promote the general good.²³ The SERF requires all customers to contribute for up to 20 years to a fund available to support Board-approved system expansions such as the Project.²⁴ The Board concluded that this mechanism for company-wide funding of expansions serving a subset of customers promotes the general good, a standard that is identical to the Section 248(a) criterion.²⁵

Finally, the cost impacts of the Project can be mitigated through the Board's rate setting authority, which is extremely broad and subject to deference where directed at proper regulatory objectives.²⁶ For instance, recovery of the costs subject to the cap could be phased in over a number of years. The Board has in the past approved phased-in rate changes not only for Vermont Gas,²⁷ but also for other companies in cases involving cost increases similar to the cost impact of the Project.²⁸ As Mr. Rendall testified in the Second Remand hearings, Vermont Gas is committed to seek Board approval of rates that are competitive and affordable.²⁹

¹⁸ First Remand Order at 26.

¹⁹ *Id.* at 27.

²⁰ By definition, integration of rates of merged companies results in support by customers with formerly lower rates of customers with formerly higher rates.

²¹ Final Order at 143 (urban customers support rural customers). Similarly, regulated telephone rates typically required support of customers subscribing to basic exchange service by other rates. See *Petition of New England Tel. & Tel. Co., Inc.*, Docket Nos. 4751/4752 (Vt. Pub. Serv. Bd. Aug 11, 1983) at 51, 81.

²² First Remand Order at 24-25 (70-year Project life).

²³ *Request of Vermont Gas Systems, Inc. to establish a System Expansion and Reliability Fund*, Docket No. 7712 (Vt. Pub. Serv. Bd. Sept. 28, 2011) ("SERF Order").

²⁴ SERF Order at 9.

²⁵ SERF Order at 18.

²⁶ *In re Consolidated Rate Appeals of Green Mountain Power Corp.*, 142 Vt. 373, 380 (1983).

²⁷ *Investigation into Vermont Gas systems, Inc. proposed rate design changes*, Docket No. 8009 (Vt. Pub. Serv. Bd. Sept. 12, 2013) at 24 (two-year phase-in of 6.71% average rate increase for interruptible class); *Tariff filing of Vermont Gas Systems, Inc.*, Docket No. 6106 (Vt. Pub. Serv. Bd. Nov. 24, 1998) at 12 (two-year phase-in of 9.5% rate increase).

²⁸ *Tariff filing of Lyndonville Electric Dep't.*, Docket No. 7915 (Vt. Pub. Serv. Bd. Jan. 31, 2013) at 7 (two-year phase-ins for 6.5% and 16% increases for two customer classes); *Petition of Burlington Electric Light Dep't.*,

III. OTHER THAN HIS MOU ANALYSIS, DR. DISMUKES' TESTIMONY ADDRESSES ISSUES THAT HAVE BEEN ADDRESSED PREVIOUSLY, OR HAVE LITTLE IMPACT ON ECONOMIC BENEFIT

The Board's November 2, 2015 Order ("November 2 Order") clearly limited the scope of the evidentiary hearing. In particular, the Board stated that the subject of the hearing would be limited to (1) the documents which AARP requested be incorporated into the record,³⁰ and (2) "the nature, relevance, and materiality of the MOU as it relates to the record of (1) the First Remand hearings of September 2014 and subsequent briefing, and (2) the Second Remand hearings of June 2015 and subsequent briefing."³¹

This limitation in scope is highly appropriate in light of the limited one-month interval (over the holiday season) between the hearings and January 8, which is the deadline for decision in order to assure continuation of the MOU.³² The limited scope is also justified by the facts that the Second Remand proceedings were comprehensive in scope, allowed for full vetting of issues, have been pending since last Winter and that continued passage of time increases uncertainty concerning Project schedule and budget.³³ As the Board stated in the First Remand Order:

[T]his is a multi-million dollar construction project that is now under way, having been found to promote the general good of the state ... [and] procedural delays can be costly and may further exacerbate cost increases of the Project, to the detriment of Vermont ratepayers and others who continue to incur the economic costs of waiting to take natural gas service.³⁴

Rather than objecting to the scope limitation contained in the November 2 Order or seeking reconsideration, instead AARP ignored it. Other than the fuel price updates, Dr. Dismukes' claims and criticisms have been previously addressed and dismissed. Dr. Dismukes' recent fuel price update is overstated and has little impact. He failed to update natural gas prices

Docket No. 7052 (Vt. Pub. Serv. Bd. April 27, 2006) at 2 (two-year phase-in for increases of 5.39% and 25.45% for two customer classes); *Petition of Green Mountain Power Corp.*, Docket No. 6958 (Vt. Pub. Serv. Bd. Oct. 21, 2005) at 36 (phase-in for customers subject to rate increase greater than 10%); *Petition of Citizens Utilities Co.*, Docket No. 5637 (Vt. Pub. Serv. Bd. July 23, 1993) at 7 (six percent annual residential rate increase for five years in connection with utility merger); *In Re City of Burlington Electric Light Dep't.*, Docket No. 4966 (Vt. Pub. Serv. Bd. Sept. 17, 1985) at 1 (phase-in of 32% rate increase).

²⁹ Rendall (3/27/15) Pf. at 5-6.

³⁰ They consist of complaints filed by VGS and Over & Under Piping Contractors, Inc. in litigation between them and a VGS press release announcing Michels Corporation as the mainline contractor.

³¹ November 2 Order at 4.

³² Rendall MOU Pf. at 5.

³³ *Petition of Vermont Gas Systems, Inc.*, Docket No. 7970 (Vt. Pub. Serv. Bd. Mar. 25, 2015) at 3; Rendall MOU Pf. at 4-5.

³⁴ First Remand Order at 29.

to the same date as fuel oil prices, which results in an apples-to-oranges comparison.³⁵ Even with the overstatement, his update results in an increased economic impact of only \$4-\$7 million, which is a small fraction of the MOU's beneficial impact of \$24-\$49 million under his analysis.³⁶ For these reasons, his analysis should be rejected.

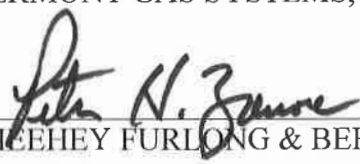
CONCLUSION

It has been almost a year since Vermont Gas disclosed the current forecasted Project cost of \$153.6 million. Since that time there has been ample opportunity to address the impact of the forecasted cost, including multiple rounds of discovery, prefiled testimony, hearings and briefs. At the end of this extended process, the Project's impact is little changed from the impact reviewed by the Board in the First Remand hearings, which resulted in denial of Rule 60(b) motions based on a Board determination that the Project continued to promote the general good. The Board should reach the same conclusion now.

Vermont Gas acknowledges the extensive time and resources devoted to the issues by the Board and the parties. VGS also appreciates the efforts of the Board and parties in facilitating an efficient review of the MOU and its beneficial impacts on the Project. These efforts will facilitate a timely Board determination and an opportunity for VGS to keep the Project on time and on budget.

Dated at Burlington, Vermont this 17th day of December 2015.

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³⁵ Tr. 12/1/15 at 116-17 (Simollardes); Tr. 12/9/15 at 108-109 (Dismukes).

³⁶ Exh. (MOU) DED-2; Tr. 12/9/15 at 112-13 (Dismukes).